

ROS.25850

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IRASEMA SUTHERLAND,
Plaintiff,

V.

ROSS DRESS FOR LESS, INC.,
Defendant.

§
§
§
§
§
§
§

CIVIL ACTION NO. _____

DEFENDANT'S INDEX OF DOCUMENTS

The following Exhibits are relied upon and incorporated by reference in Defendant Ross Stores, Inc.'s Notice of Removal:

1. State Court Docket Sheet;
2. Plaintiff's Original Petition filed April 2, 2021;
3. Citation on Ross Dress for Less, Inc., issued April 7, 2021 and returned April 30, 2021; and
4. Defendant's Original Answer, filed May 26, 2021.

Respectfully submitted,

**FLETCHER, FARLEY
SHIPMAN & SALINAS, LLP**

/s/ Fernando P. Arias
FERNANDO P. ARIAS
ATTORNEY IN CHARGE
State Bar No. 24025946
9201 N. Central Expressway, Suite 600
Dallas, Texas 75231
214-987-9600
214-987-9866 fax
fred.arias@fletcherfarley.com

ATTORNEY FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that the foregoing instrument was electronically filed via the Court's CM/ECF system and a true and correct copy of same was delivered to all counsel of record in accordance with the FEDERAL RULES OF CIVIL PROCEDURE on this the 28th day of May, 2021.

/s/ Fernando P. Arias
FERNANDO P. ARIAS

EXHIBIT

“1”

Case Information

DC-21-04204 | IRASEMA SUTHERLAND vs. ROSS DRESS FOR LESS, INC.

Case Number	Court	Judicial Officer
DC-21-04204	101st District Court	WILLIAMS, STACI
File Date	Case Type	Case Status
04/02/2021	PROPERTY	OPEN

Party

PLAINTIFF
SUTHERLAND, IRASEMA

Active Attorneys▼
Lead Attorney
BAUGUSS, JAMES L, III
Retained

DEFENDANT
ROSS DRESS FOR LESS, INC.

Address
SERVED THROUGH ITS PRESIDENT, VICE-PRESIDENT OR REG. AGENT
C.T. CORPORATION 1999 BRYAN STREET, SUITE 900
DALLAS TX 75201

Events and Hearings

04/02/2021 NEW CASE FILED (OCA) - CIVIL

04/02/2021 ORIGINAL PETITION ▾

ORIGINAL PETITION

04/02/2021 CORRESPONDENCE - LETTER TO FILE ▾

LETTER
04/02/2021 ISSUE CITATION ▾

ISSUE CITATION - ROSS DRESS FOR LESS, INC.

04/07/2021 CITATION ▾

Served
04/30/2021

Anticipated Server
ESERVE

Anticipated Method
Actual Server
PRIVATE PROCESS SERVER

Returned
05/03/2021
Comment
ROSS DRESS FOR LESS, INC.

05/03/2021 RETURN OF SERVICE ▾

EXECUTED CITATION - ROSS DRESS FOR LESS, INC.

Comment
EXECUTED CITATION - ROSS DRESS FOR LESS, INC.

06/11/2021 DISMISSAL FOR WANT OF PROSECUTION ▾

101st Dismissal Letter - 2017

101st Dismissal Letter - 2017

Judicial Officer
WILLIAMS, STACI

Hearing Time
9:00 AM

Financial

SUTHERLAND, IRASEMA

Total Financial Assessment	\$300.00
Total Payments and Credits	\$300.00

4/5/2021 Transaction Assessment	\$300.00
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4/5/2021 CREDIT CARD - TEXFILE (DC)	Receipt # 20531-2021-DCLK	SUTHERLAND, IRASEMA	(\$300.00)
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Documents

ORIGINAL PETITION

LETTER

ISSUE CITATION - ROSS DRESS FOR LESS, INC.

101st Dismissal Letter - 2017

101st Dismissal Letter - 2017

EXECUTED CITATION - ROSS DRESS FOR LESS, INC.

EXHIBIT

“2”

CAUSE NO.	DC-21-04204
IRASEMA SUTHERLAND, Plaintiff,	IN THE DISTRICT COURT
v.	<u>101st</u> JUDICIAL DISTRICT
ROSS DRESS FOR LESS, INC., Defendant.	DALLAS COUNTY, TEXAS

PLAINTIFF'S ORIGINAL PETITION AND REQUEST FOR DISCLOSURE

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, IRASEMA SUTHERLAND, Plaintiff, and files Plaintiff's Original Petition, complaining of Defendant, ROSS DRESS FOR LESS, INC., and would show unto the Court as follows:

I. SELECTION OF DISCOVERY LEVEL

1. This suit is governed by discovery control plan I under Rule 190.2 of the Texas Rules of Civil Procedure.

II. PARTIES

2. Plaintiff, IRASEMA SUTHERLAND, is an individual who resides at 1301 W Avenue F, Garland TX 75040.

3. Defendant, ROSS DRESS FOR LESS, INC., is an out of state corporation that may be served through its President, Vice-President or Registered Agent, C T Corporation System, at 1999 Bryan Street Suite 900, Dallas, TX 75201. Citation is being requested for this Defendant and service will be completed by a private process server.

III. JURISDICTION & VENUE

4. The Court has continuing jurisdiction over Defendant, because Defendant maintains minimum contacts with the State of Texas. The Court has jurisdiction over the controversy, because the damages are within the statutory jurisdictional limits of the Court.

5. Venue is proper in Dallas County, Texas, because all or a substantial part of the events or omissions giving rise to the claim occurred in Dallas County.

IV. FACTS

6. On December 6, 2019 Plaintiff was injured on the premises located at 521 South Plano Road, Richardson, Dallas County, TX. Plaintiff, Irasema Sutherland, was walking into the dressing room hallway when she slipped and fell on a fallen wet floor sign. Defendant failed to maintain a safe environment for its customers by removing hazardous items from a high traffic regularly supervised area. At the time of injury, the premises were being used as a retail store by Defendant, ROSS DRESS FOR LESS.

7. Defendant was in control of the premises on which Plaintiff's injuries occurred. At the time the injuries occurred, Defendant was the owner of the premises or leasing the premises and had the exclusive right to control the property on which Plaintiff was injured.

8. Plaintiff was an invitee at the time the injury occurred. Plaintiff entered on Defendant's premises for the mutual benefit of herself and Defendant and at the implied invitation of Defendant. Defendant extended an open invitation to the public to enter the premises.

V. NEGLIGENCE

9. Because Plaintiff was an invitee at the time of injury, Defendant, ROSS DRESS FOR LESS, INC., owed a duty to exercise ordinary care to keep the premises in reasonably safe condition, inspect the premises to discover latent defects, and to make safe any defects or give an adequate warning of any dangers.

10. Defendant's conduct, and that of its agents, servants, and employees, acting within the scope of their employment, constituted a breach of the duty of ordinary care

owed to Plaintiff. Defendant knew or should have known that the condition on its premises created an unreasonable risk of harm to invitees. Specifically, Defendant breached its duty in one or more of the following ways:

1. Failing to inspect the premises on a regular basis;
2. Failing to remove items that created a hazardous environment;
3. Failing to place signs warning invitees;
4. Failing to instruct or train its agents, servants, and employees to maintain a hazard free environment; and
5. Failing to supervise its agents, servants, and employees to ensure the safety of invitees.

VI. DAMAGES

11. As a proximate result of Defendant's negligence, Plaintiff suffered severe physical injuries. Plaintiff's damages do not exceed seventy-five thousand dollars (\$75,000) As a result of her injuries, Plaintiff has suffered the following damages:

- a. Physical pain and mental anguish in the past and future;
- b. Medical expenses in the past and future; and
- c. Physical impairment.

VII. PRAYER

12. WHEREFORE, PREMISES CONSIDERED, Plaintiff, IRASEMA SUTHERLAND, respectfully requests that Defendant, ROSS DRESS FOR LESS, INC., be cited to appear and answer, and on final trial, that Plaintiff have judgment against Defendant for:

- a. Actual damages;
- b. Prejudgment and post judgment interest as allowed by law;
- c. Costs of suit;
- d. \$250,000 or less, excluding interest, statutory or punitive damages and penalties, and attorney's fees and costs; and
- e. Any further relief, either in law or equity, to which Plaintiff is justly

entitled.

Respectfully submitted,

Ben Abbott & Associates, PLLC
1934 Pendleton Drive
Garland, Texas 75041
(972) 263-5555
(817) 263-5555
(972) 682-7586 Facsimile
eService@benabbott.com
/s/ James Bauguss III
James Bauguss III
State Bar No. 24045463

ATTORNEY FOR PLAINTIFF

EXHIBIT

“3”

CAUSE NO. DC-21-04204

IRASEMA SUTHERLAND,

IN THE DISTRICT COURT

Plaintiff(s),

101ST JUDICIAL DISTRICT

ROSS DRESS FOR LESS, INC.,

Defendant(s).

DALLAS COUNTY, TEXAS

RETURN OF SERVICE

Came to my hand on **Wednesday, April 28, 2021** at **11:13 AM**,
Executed at: **1999 BRYAN STREET SUITE 900, DALLAS, TX 75201**
within the county of **DALLAS** at **9:30 AM**, on **Friday, April 30, 2021**,
by delivering to the within named:

ROSS DRESS FOR LESS, INC.

By delivering to its Registered Agent, CT CORPORATION SYSTEM
By delivering to its Authorized Agent, LINDSEY BARRIENTEZ
a true copy of this

CITATION and PLAINTIFF'S ORIGINAL PETITION AND REQUEST FOR DISCLOSURE

having first endorsed thereon the date of the delivery.

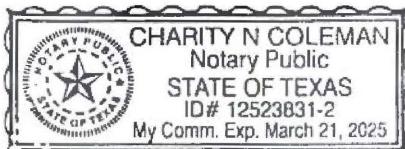
BEFORE ME, the undersigned authority, on this day personally appeared **Ernesto Martin Herrera** who after being duly sworn on oath states: "My name is **Ernesto Martin Herrera**. I am a person not less than eighteen (18) years of age and I am competent to make this oath. I am a resident of the State of Texas. I have personal knowledge of the facts and statements contained herein and aver that each is true and correct. I am not a party to nor related or affiliated with any party to this suit. I have no interest in the outcome of the suit. I have never been convicted of a felony or of a misdemeanor involving moral turpitude. I am familiar with the Texas Rules of Civil Procedure, and the Texas Civil Practice and Remedies Codes as they apply to service of process. I am certified by the Judicial Branch Certification Commission to deliver citations and other notices from any District, County and Justice Courts in and for the State of Texas in compliance with rule 103 and 501.2 of the TRCP."

By:

Esther

Ernesto Martin Herrera - PSC 4418 - Exp 11/30/21
served@specialdelivery.com

Subscribed and Sworn to by Ernesto Martin Herrera, Before Me, the undersigned authority, on
this 3rd day of May, 2021.



Charity N. Coleman
Notary Public in and for the State of Texas

**FORM NO. 353-3 - CITATION
THE STATE OF TEXAS**

To: **ROSS DRESS FOR LESS, INC.
SERVED THROUGH ITS PRESIDENT VICE-PRESIDENT OR REG AGENT
CT CORPORATION 1999 BRYAN STREET SUITE 900
DALLAS TX 75201**

GREETINGS:

You have been sued. You may employ an attorney. If you or your attorney do not file a written Answer with the clerk who issued this citation by 10 o'clock a.m. of the Monday next following the expiration of twenty days after you were served this citation and **petition**, a default judgment may be taken against you. In addition to filing a written answer with the clerk, you may be required to make initial disclosures to the other parties of this suit. These disclosures generally must be made no later than 30 days after you file your answer with the clerk. Find out more at TexasLawHelp.org. Your answer should be addressed to the clerk of the **101st District Court** at 600 Commerce Street, Ste. 101, Dallas, Texas 75202.

Said Plaintiff being **IRASEMA SUTHERLAND**

Filed in said Court **2nd day of April, 2021** against

ROSS DRESS FOR LESS, INC.

For Suit, said suit being numbered **DC-21-04204**, the nature of which demand is as follows:
Suit on **PROPERTY** etc. as shown on said petition **REQUEST FOR DISCLOSURE**, a copy of which accompanies this citation. If this citation is not served, it shall be returned unexecuted.

WITNESS: FELICIA PITRE, Clerk of the District Courts of Dallas, County Texas.

Given under my hand and the Seal of said Court at office this **7th day of April, 2021**.

ATTEST: FELICIA PITRE, Clerk of the District Courts of Dallas, County, Texas

Carelia Bouligny, Deputy

FORWARD THIS TO CARELIA BOULIGNY
YOUR INSURANCE COMPANY

**MANDE ESTA FORMA
A SU ASEGURANZA**

**ESEERVE
CITATION**

DC-21-04204

IRASEMA SUTHERLAND

**Vs.
ROSS DRESS FOR LESS, INC.**

**ISSUED THIS
7th day of April, 2021**

**FELICIA PITRE
Clerk District Courts,
Dallas County, Texas**

By: CARELIA BOULIGNY, Deputy

**Attorney for Plaintiff
JAMES L BAUGUSS, III
BEN ABBOTT AND ASSOCIATES
1934 PENDLETON DR
GARLAND TX 75041
972-263-5555
eService@benabbott.com**

**DALLAS COUNTY
SERVICE FEES
NOT PAID**



OFFICER'S RETURN

Case No. : DC-21-04204

Court No.101st District Court

Style: IRASEMA SUTHERLAND

Vs.

ROSS DRESS FOR LESS, INC.

Came to hand on the _____ day of _____, 20_____, at _____ o'clock _____. M. Executed at _____, within the County of _____, at _____ o'clock _____. M. on the _____ day of _____, 20_____, by delivering to the within named _____

Each in person, a true copy of this Citation together with the accompanying copy of this pleading, having first endorsed on same date of delivery. The distance actually traveled by me in serving such process was _____ miles and my fees are as follows: To certify which witness my hand.

For serving Citation	\$ _____	of _____ County, _____
For mileage	\$ _____	by _____ Deputy
For Notary	\$ _____	

(Must be verified if served outside the State of Texas.)

Signed and sworn to by the said _____ before me this _____ day of _____, 20_____,
To certify which witness my hand and seal of office.

Notary Public _____ County _____

**RETURN / AFFIDAVIT
PROOF / ATTACHED**

EXHIBIT

“4”

ROS.25850

CAUSE NO. DC-21-04204

IRASEMA SUTHERLAND, Plaintiff,	§	IN THE DISTRICT COURT
	§	
	§	
V.	§	DALLAS COUNTY, TEXAS
	§	
	§	
ROSS DRESS FOR LESS, INC., Defendant.	§	101st JUDICIAL DISTRICT
	§	
	§	

**DEFENDANT'S ORIGINAL ANSWER
TO PLAINTIFF'S ORIGINAL PETITION****TO THE HONORABLE JUDGE OF SAID COURT:**

Defendant **ROSS DRESS FOR LESS, INC.** now comes and files its Original Answer to Plaintiff's Original Petition. In support of same, Defendant would respectfully show unto the Court as follows:

I.
GENERAL DENIAL

Defendant denies each and every, all and singular, the material allegations contained in Plaintiff's Original Petition and demands strict proof thereof.

II.

Pleading further, in the alternative, and by way of affirmative defense, Defendant would show that the condition of which Plaintiff complains was open and obvious or was a condition of which Plaintiff had actual or constructive knowledge. Because Plaintiff was aware or should have been aware of the alleged dangerous condition, the condition did not pose an unreasonable risk and Defendant owed no duty to Plaintiff to warn of the alleged condition or make such condition safe.

III.

Defendant more specifically denies that it, by and through its representatives and employees, had any actual or constructive knowledge of an unreasonably dangerous condition in the area where Plaintiff allegedly fell. Without any knowledge of an unreasonably dangerous condition, Defendant would not know to warn others of such condition.

IV.

Pleading further, in the event that Defendant is found to be liable to Plaintiff under any theory of negligence or other cause of action under law, Defendant asserts the doctrine of comparative causation as provided under Texas law, requiring that the harm caused by the negligence of Plaintiff be compared by the trier of fact with the harm, if any, caused by the alleged negligence of Defendant. For further answer, and in the alternative, Defendant alleges that Plaintiff's claims are barred or reduced due to the negligence of Plaintiff, which contributed to or proximately caused the injuries and damages alleged by Plaintiff in Plaintiff's Original Petition. Defendant, therefore, would respectfully request that the trier of fact consider Plaintiff's own negligence in the determination of facts and apportionment of liability in this matter.

V.

In the event that Defendant is found to be liable to Plaintiff and in the event that Plaintiff's injuries are found to have been caused by the incident made the basis of this lawsuit, Defendant pleads that Plaintiff's recovery of medical and health care expenses is limited to the amount actually paid or incurred by or on behalf of Plaintiff. TEXAS CIVIL PRACTICE & REMEDIES CODE §41.0105.

VI.
JURY DEMAND

In accordance with Rule 216 of the TEXAS RULES OF CIVIL PROCEDURE, Defendant hereby demands a trial by jury. Simultaneously with the filing of this demand, a jury fee is being paid on behalf of Defendant.

WHEREFORE, PREMISES CONSIDERED, Defendant prays that Plaintiff takes nothing by this suit, that Defendant be awarded its costs, and for such other and further relief, both general and special, at law or in equity, to which it may show itself to be justly entitled.

Respectfully submitted,

**FLETCHER, FARLEY
SHIPMAN & SALINAS, LLP**

/s/ Fernando P. Arias
FERNANDO P. ARIAS
State Bar No. 24025946
9201 N. Central Expwy., Suite 600
Dallas, Texas 75231
214-987-9600
214-987-9866 fax
fred.arias@fletcherfarley.com
ATTORNEY FOR DEFENDANT

CERTIFICATE OF SERVICE

THIS WILL CERTIFY that a true and correct copy of the foregoing instrument has been mailed, telecopied, hand delivered, or electronically transmitted to all attorneys of record in this cause of action, in compliance with Rule 21a. of the TEXAS RULES OF CIVIL PROCEDURE, on the 26th day of May, 2021.

/s/ Fernando P. Arias
FERNANDO P. ARIAS

Automated Certificate of eService

This automated certificate of service was created by the efiling system. The filer served this document via email generated by the efiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Abby Golman on behalf of Fernando Arias
Bar No. 24025946
abby.golman@fletcherfarley.com
Envelope ID: 53849962
Status as of 5/27/2021 1:46 PM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
JAMES BAUGUSS		eservice@benabbott.com	5/26/2021 4:05:39 PM	SENT
Fernando P.Arias		fred.arias@fletcherfarley.com	5/26/2021 4:05:39 PM	SENT
Abby Golman		abby.golman@fletcherfarley.com	5/26/2021 4:05:39 PM	SENT
Seth J.Boettcher		seth.boettcher@fletcherfarley.com	5/26/2021 4:05:39 PM	SENT